

## REMARKS

The Office Action of February 28, 2007 has been received and considered. Claims 1-33 are pending. Claims 1, 18, 19, and 36 have been amended. Reconsideration of the application in view of the following remarks, and allowance of the pending claims is respectfully requested. Each of the Examiner's rejections is discussed below.

### Section 112

Claims 1-33 have been rejected under 35 U.S.C. § 112, second paragraph, on the grounds the phrase "anatomical high points of a user's body" is indefinite. The Office Action asserts with respect to this phrase that "there is no previous recited basis for such points...." This rejection is respectfully traversed.

It is respectfully submitted that there are numerous recitations throughout the specification of the phrase "anatomical high points," or elevated points including, for example, in paragraphs [2], [8], [18], [25]-[29], and the Abstract. Not only is the phrase recited numerous times, but the specification also provides explicit examples of anatomical high points when discussing the tenting effect that occurs between such anatomical high points in swimwear.

Specifically, the specification refers to tenting between the pectoral muscles, between the breasts, and in the lumbar region of the back, which is an anatomical low point with respect to the areas of the back surrounding the lumbar region. (See paragraph [2], lines 5-6; paragraph [18], lines 2-4; paragraph [25], lines 1-2; paragraph [26], lines 2-4; paragraph [27], lines 1-2; and paragraph 28, lines 1-4).

Consequently, one skilled in the art reading the claims in light of the specification would clearly understand the meaning of an anatomical high point of a user's body. It is respectfully submitted that the phrase in question is definite and would be quite clear to one skilled in the art.

Accordingly, the rejection is improper and should be withdrawn.

## **Section 102**

Claims 1, 2, 4-7, 10-12, 19, 20, 22-25 and 28-30 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,916,755 to Feigenbaum et al (“Feigenbaum”). This rejection is respectfully traversed.

Feigenbaum discloses a swimsuit having a first control panel 16 having an oval shape positioned over the abdomen of the user and a pair of elongated oval control patches 18, 20 located on the upper rear hip areas. Applicant initially notes that contrary to the assertion in the Office Action, control patches 18, 20 are not positioned in the lumbar region; they are positioned directly on the upper hip areas (See col. 3, lines 4-6).

Feigenbaum does not disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover, and defines an area of increased tension in, an area of a user’s body **between** anatomical high points of the user’s body, as required by independent claims 1 and 19.

Providing increased tension provided in the area between anatomical high points advantageously reduces tenting that typically occurs in this area. By providing increased tension in this area, the fabric will be forced closer to the user’s skin, thereby reducing the tenting effect and drag, and improving performance. This benefit is not realized with the construction of Feigenbaum.

Rather than positioning material that will at least partially cover, and define an area of increased tension in, an area of a user’s body between anatomical high points, Feigenbaum discloses positioning material **directly on anatomical high points**, namely, the abdomen and upper hips. Feigenbaum recites that positioning first control panel 16 directly on the abdomen “flattens any bulge in that region” (col. 3, line 7.) Thus, Feigenbaum purposefully positions first control panel 16 on an anatomical high point, **not between them. Consequently, the swimsuit**

**of Feigenbaum cannot define an area of increased tension in an area between** anatomical high points.

With respect to control patches 16, 18 of Feigenbaum, these are positioned **substantially on** anatomical high points, namely, the upper hips, such that the buttocks are “firmed and rounded” (col. 3, line 11.). They do not substantially cover the lumbar region of the back. Consequently, Feigenbaum expressly teaches positioning the control panel and control patches on anatomical high points, thereby teaching away from defining an area of increased tension in an area of a user’s body between anatomical high points.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

#### **Feigenbaum and Itagaki**

Claims 8, 9, 13, 17, 26, 27, 31 and 35 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum in view of U.S. Patent No. 5, 033,116 to Itagaki et al. (“Itagaki”). Itagaki is cited as disclosing a triangular shaped material placed between the breasts of a user. This rejection is respectfully traversed.

Itagaki fails to overcome the deficiencies of Feigenbaum noted above. Specifically, Itagaki fails to disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover, and defines an area of increased tension in, an area of a user’s body between anatomical high points of the user’s body, as required by independent claims 1 and 19, from which claims 8, 9, 13, 17, 26, 27, 31 and 35 depend. The flexible triangular shaped waterproof sheet 9 of Itagaki is not a stretchable piece of material that defines an area of increased tension in an area of a user’s body between anatomical high points of the user’s body.

Further, with respect to claims 17 and 35, Applicant respectfully submits that Itagaki and Feigenbaum fail to disclose or make obvious three elongate elements connected to one another at first ends thereof, a first of the elongate elements positioned to extend upwardly from a sternum of a user between pectoral muscles of a user, the second and third elongate elements spaced approximately 120° from one another and the first elongate element. Feigenbaum has no such elongate elements. Itagaki discloses only a triangular shaped piece of material on the front of the suit (FIG. 1), not three elongate elements connected to one another at first ends thereof.

Accordingly, the rejection is improper and should be withdrawn.

#### **Feigenbaum**

Claims 3, 14, 21 and 32 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum. This rejection is respectfully traversed.

As noted above, Feigenbaum does not disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover least partially cover, and defines an area of increased tension in, an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19, from which claims 3, 14, 21 and 32 depend. Accordingly, the rejection is improper and should be withdrawn.

#### **Feigenbaum and Kudo**

Claims 15, 16, 33 and 34 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum in view of U.S. Patent No. 4,654,894 to Kudo ("Kudo"). Kudo is cited as disclosing a swimsuit having an additional material in the shape of a diamond with a larger width than height. This rejection is respectfully traversed.

Kudo fails to overcome the deficiencies of Feigenbaum noted above, since Kudo does not

disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover least partially cover, and defines an area of increased tension in, cover an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19, from which claims 15, 16, 33 and 34 depend.

Further, Kudo fails to overcome the deficiencies noted in the Office Action. Specifically, Kudo does not disclose or make obvious a substantially diamond shaped form with its sides curved slightly inwardly, as required by claims 15 and 33. The diamond shape of Kudo clearly has straight edges, with no curve whatsoever. There is no suggestion or motivation in Kudo to form its diamond shape with sides curved slightly inwardly.

Nor does Kudo disclose or make obvious a substantially flattened diamond shaped form, having a width substantially larger than its height, as required by claims 16 and 34. In fact, the diamond shape of Kudo has a height substantially larger than its width, and it does not have a substantially flattened diamond shaped form.

Accordingly, for this reason as well, the rejection is improper and should be withdrawn.

#### **Allowable Claims**

Claims 18 and 36 have been indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph, and to include all the limitations of the base claim and any intervening claims.

Claims 18 and 36 have been rewritten in independent form, and are now believed to be in form for allowance. An indication to that effect is respectfully requested.

**Conclusion**

Consequently, pending claims 1-36 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

Respectfully submitted,

Dated: July 30, 2007

/Gregory J. Cohan/  
Gregory J. Cohan, Reg. No. 40,959  
BANNER & WITCOFF, LTD.  
28 State Street, 28th Floor  
Boston, MA 02109  
(617) 720-9600